

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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SAMUEL CABASSA,

Plaintiff,

-v-

9:06-CV-0852

RICHARD WURZEL,

Defendant.

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APPEARANCES:

COVINGTON & BURLING LLP  
Attorneys for Plaintiff  
620 Eighth Avenue  
New York, NY 10018

HON. ERIC T. SCHNEIDERMAN  
Attorney General for the State of New York  
Attorney for Defendant  
The Capitol  
Albany, NY 12224

DAVID N. HURD  
United States District Judge

OF COUNSEL:

PHILLIP A. IRWIN, ESQ.  
DOUGLAS S. CURRAN, ESQ.

C. HARRIS DAGUE, ESQ.  
Ass't Attorney General

**DECISION and ORDER**

Plaintiff brought this civil rights action pursuant to 42 U.S.C. § 1983. On August 28, 2013, the Honorable David E. Peebles, United States Magistrate Judge, advised, by Report-Recommendation, that defendant's motion for judgment on the pleadings be granted with leave to replead only with respect to plaintiff's Eighth Amendment medical indifference claim

against defendant Wurzel based upon the alleged delay in or about April 2005 to provide him with a contact lens for his right eye. Plaintiff timely filed objections to the Report-Recommendation. The defendant did not respond.

Based upon a de novo review of the portions of the Report-Recommendation to which plaintiff objected, the Report-Recommendation is accepted in part and rejected in part. See 28 U.S.C. § 636(b)(1).

Therefore, it is

ORDERED that

1. Defendant Wurzel's motion for judgment on the pleadings is DENIED as to plaintiff's failure to timely serve him under Federal Rule of Civil Procedure 4(m);

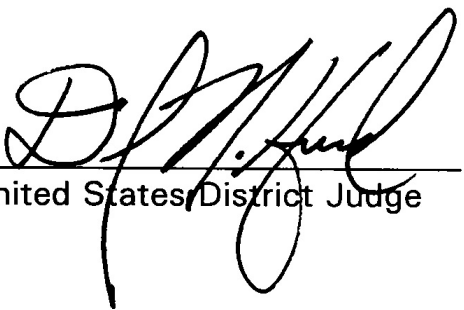
2. Defendant Wurzel's motion for judgment on the pleadings is GRANTED with leave to replead as follows;

3. Plaintiff is granted leave to file an amended complaint only as to his Eighth Amendment medical indifference claims against defendant Wurzel: (1) based upon the alleged delay in or about April 2005 to provide him with a contact lens for his right eye, and (2) based upon the allegation that defendant Wurzel along with two other individuals made plaintiff wait in October 2005 for a replacement pair of contact lenses;

4. The amended complaint shall be filed on or before October 18, 2013; and

5. Failure to file an amended complaint will result in a judgment dismissing the complaint without further order.

IT IS SO ORDERED.



United States District Judge

Dated: September 25, 2013  
Utica, New York.